

No. PD-1089-20

CHARLES LYNCH

§

VS.

§

THE STATE OF TEXAS

§

FILED IN THE
COURT OF CRIMINAL APPEALS
8/26/2022
DEANA WILLIAMSON, CLERK

OF TEXAS

STATE'S MOTION TO PUBLISH

TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

Comes now the State of Texas, by and through her Assistant Criminal District Attorney, and respectfully requests this Court to grant the State's motion that a majority of the judges on this Court determine that the opinion issued in this case should be published, pursuant to TEX. R. APP. P. 77.2(b) and TEX. R. APP. P. 47.2(b), and in support thereof, the State would show the Court the following:

I.

On August 24, 2022, this Court issued its opinion reversing the judgment of the court of appeals. *Lynch v. State*, No. PD-1089-20 (Tex. Crim. App., Aug. 24, 2022) (not designated for publication). The opinion is designated "do not publish." The issue before the Court involved the trial court's decision to admit two of the appellant's prior convictions for possession of cocaine with the intent to deliver in order to show the appellant's intent and knowledge in the prosecution of the offense of possession of a controlled substance with the intent to deliver. The Court's majority opinion is

thorough and would be helpful to the bench and bar. *Cf.* TEX. R. APP. P. 77.3 (“Unpublished opinions have no precedential value and must not be cited as authority by counsel or by the court.”).

II.

The opinion of the court of appeals in this case, initially reversing the appellant’s conviction, is published. *Lynch v. State*, 612 S.W.3d 602 (Tex. App.—Houston [1st Dist.] 2020). Going forward, the bench and bar will not have any opinion of precedential value, revealing why the judgment of the court of appeals was in error.

III.

This Court’s majority opinion logically presented the reasons that the appellant’s two prior convictions were admissible, noting

- The two prior convictions rebutted the defensive theory that the appellant had no knowledge or awareness of cocaine in his own residence, that he did not know of the use and sale of cocaine in his own residence, and that he did not approve of the use and sale of cocaine at his own residence.
- The two prior convictions were offered only as rebuttal evidence and for a limited purpose. The State did not present evidence of the details of these two offenses, and the trial judge gave the jurors a limiting instruction.
- The presentation of the evidence did not take a lot of time.

- The State had great need for the evidence because a defense witness, who had claimed responsibility for all of the illegal narcotics, had negated every element that the State was required to prove.

Lynch, slip opinion at 6-7. This opinion would be helpful to the bench and bar in detailing the proper manner in which such an extraneous offense should be introduced and admitted into evidence, as contrasted with those decisions in which similar evidence has not been properly introduced and admitted. *Cf. Valadez v. State*, ___ S.W.3d ___, No. PD-0574-19, 2022 WL 946368 (Tex. Crim. App., Mar. 30, 2022) (published decision involving admissibility of illegal narcotics transactions in prosecution for possession of marijuana). In light of *Valadez* and the decision of the court of appeals in this case, prosecutors and judges appear to be struggling with the proper manner in which to introduce and admit a narcotics defendant's prior narcotics activity. This decision will provide further guidance, as has *Valadez*.

IV.

The Court's well-researched and factually-thorough opinion in this cause would provide guidance on the circumstances under which a narcotics defendant's prior narcotics activity is properly introduced and admitted. The State therefore requests this Court to change the "do not publish" notation on the opinion in this cause to "publish."

Respectfully submitted,

JACK ROADY
Criminal District Attorney
Galveston County, Texas

/s/ Alan Curry

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CERTIFICATE OF SERVICE

The undersigned attorney for the State certifies that this motion was efiled or emailed to Joel Bennett, attorney for Charles Lynch, at joel@searsandbennett.com, on August 25, 2022.

/s/ Alan Curry
ALAN CURRY
Assistant Criminal District Attorney
Galveston County, Texas

CERTIFICATE OF COMPLIANCE

The undersigned Attorney for the State certifies this brief is computer generated, and consists of 605 words.

/s/ Alan Curry
ALAN CURRY
Assistant Criminal District Attorney
Galveston County, Texas

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Associated Case Party: Charles Lynch

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